



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### West Central Regional Office

3019 Peters Creek Road, Roanoke, Virginia 24019

Telephone (540) 562-6700, Fax (540) 562-6725

[www.deq.virginia.gov](http://www.deq.virginia.gov)

L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Steven A. Dietrich  
Regional Director

## STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO NORTH OAKS, LLC

### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and (8d) by the Board to North Oaks, LLC, for the purpose of resolving certain violations of environmental law and/or regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 62.1-44.7 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.
6. "North Oaks" means North Oaks, LLC, a Virginia corporation.
7. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
8. "Regulations" means the Virginia Water Protection Permit Program Regulation, 9 VAC 25-210-10 *et seq.* and the Virginia Water Protection General Permit for Impacts from

Development and Certain Mining Activities, 9 VAC 25-690-10 *et seq.*

9. "The Facility" means a stormwater management facility at North Oaks Subdivision, a subdivision under construction at the Red Lane extension in Salem, Virginia. The 33.5 acre parcel in North Oaks Subdivision where the Facility is located is listed in City of Salem records as Tax Parcel ID 40-1-3.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. North Oaks, LLC ("North Oaks"), constructed a storm water management facility in a non-perennial stream at the North Oaks subdivision in Roanoke County without first obtaining a VWP Permit. A consultant, Balzer and Associates ("Balzer") submitted a delineation report to North Oaks in September 2003 and that report was confirmed by the US Army Corps of Engineers ("Corps") in October 2003. Both Balzer and the Corps notified North Oaks that state and federal permits would be required to construct in the wetlands delineated in the report.
2. DEQ and Corps staff inspected the facility on March 15, 2005 and observed that wetland and stream filling and excavation activities had occurred at the site. Construction of the subdivision had been completed to the point that no further planned wetlands impacts would happen.
3. Va. Code § 62.1-44.5.A states that

Except in compliance with a certificate issued by the Board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; 2. Excavate in a wetland; 3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; or 4. On and after October 1, 2001, conduct the following activities in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that caused significant alteration or degradation of existing wetland acreage or functions.

4. North Oaks has not obtained a VWP permit for construction of the Facility.
5. On March 15, 2005, DEQ issued a Notice of Violation to North Oaks for constructing the Facility without a VWP permit in violation of Va. Code § 62.1-44.5 and 9 VAC 25-210-50.



**SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it pursuant to Va. Code §62.1-44.15(8a) and (8d), and upon consideration of Va. Code § 10.1-1186.2, the Board orders North Oaks and North Oaks agrees, to perform the actions described below and in Appendix A and Appendix B of this Order. In addition, the Board orders North Oaks, and North Oaks voluntarily agrees, to pay a civil charge of \$7,000.00 in settlement of the violations cited in this Order.

1. North Oaks shall pay \$1,750.00 of the civil charge within 30 days of the effective date of this Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, VA 23240

The payment shall include North Oaks's Federal Identification Number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

2. North Oaks shall satisfy \$5,250 of the civil charge upon completing the Supplemental Environmental Project ("SEP") described in Appendix B of this Order.
3. The net cost of the SEP to North Oaks shall not be less than the amount set forth in Paragraph D.2. If it is, North Oaks shall pay the remaining amount in accordance with Paragraph D.1 of this Order, unless otherwise agreed to by the Department. "Net costs" means the costs of the project minus any tax savings, grants and first-year operation cost reductions or other efficiencies.
4. By signing this Order, North Oaks certifies that it has not commenced performance of the SEP before DEQ identified the violations in this Order and approved the SEP.
5. In the event that it publicizes the SEP or the SEP results, North Oaks shall state in a prominent manner that the project is a part of a settlement for an enforcement action.
6. The Department has sole discretion to:
  - a. Authorize any alternate SEP proposed by North Oaks; and
  - b. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
7. Should the Department determine that North Oaks has not completed the SEP, or alternate

SEP, in a satisfactory manner, the Department shall so notify North Oaks in writing. Within 30 days of being notified, North Oaks shall pay the amount specified in Paragraph 2 as provided in Paragraph 1 above.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of North Oaks, for good cause shown by North Oaks, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (a) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (b) seeking subsequent remediation of the facility as may be authorized by law; or (c) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, North Oaks admits the jurisdictional allegations contained herein.
4. North Oaks declares that it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.* and the State Water Control Law, Va. Code § 62.1-44.2 *et seq.* and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and agrees to waive any objection to, or appeal from, the entry of this Order. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or judicial review of, any action taken by the Board to enforce this Order.
5. Failure by North Oaks to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. North Oaks shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. North Oaks shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. North Oaks



shall notify the WCRO Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth: (a) the reasons for the delay or noncompliance; (b) the projected duration of any such delay or noncompliance; (c) the measures taken and to be taken to prevent or minimize such delay or noncompliance; and (d) the timetable by which such measures will be implemented and the date full compliance will be achieved. Failure to so notify the WCRO Regional Director within twenty-four hours of learning of any condition above, which North Oaks intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director or his designee and North Oaks. Notwithstanding the foregoing, North Oaks agrees to be bound by any compliance date that precedes the effective date of this Order.
10. Any plans, reports, schedules or specifications attached hereto or submitted by North Oaks and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
11. This Order shall continue in effect until: a) North Oaks petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of this Order, b) the Director or Board terminates the Order in his or its sole discretion upon 30 days notice to North Oaks, whichever occurs earlier. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve North Oaks from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. The undersigned representative of North Oaks certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind North Oaks to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of North Oaks.
13. By the signature of an authorized official below, North Oaks voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 12<sup>th</sup> day of SEPT., 2006.

Steven A. Dietrich

Steven A. Dietrich, Regional Director  
West Central Regional Office  
Department of Environmental Quality

North Oaks voluntarily agrees to the issuance of this Order.

By: Mark Henrickson

PRESIDENT HENMARK INC  
MEMBER INNSBROOKE LLC  
MEMBER

Commonwealth of Virginia

City/County of Roanoke

The foregoing document was signed and acknowledged before me this 16<sup>th</sup> day of  
June, 2006, by Mark Henrickson, who is member of  
North Oaks.

Lyssie L. Nash  
Notary Public

My commission expires: 8-31-08

**APPENDIX A  
SCHEDULE OF COMPLIANCE**

1. Except in compliance with a VWP permit, North Oaks shall not dredge, fill or discharge any pollutant into, or adjacent to surface waters, or otherwise alter the physical, chemical or biological properties of surface waters, excavate in wetlands, or conduct the following activities in a wetland: a) New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b) Filling or dumping; c) Permanent flooding or impounding; d) New activities that cause significant alteration or degradation of existing wetland acreage or functions.
2. **Not later than July 1, 2006**, North Oaks shall submit for review and approval a complete VWP permit application and fee for the Facility. The Department shall approve, or modify and approve the complete permit application in accordance with the Regulation and applicable guidance
3. North Oaks shall perform compensatory mitigation for impacts caused by the Facility. The compensatory mitigation plan for the Facility shall be submitted under the authority of the VWP permit for the Facility. Within **60 days** of the issuance of a VWP permit, North Oaks shall submit a complete final compensation plan for DEQ approval. North Oaks shall respond to any notices of deficiency regarding submittals by North Oaks to the Department within 15 days of receipt of any such notices. Failure to correct all deficiencies after the issuance of three notices of deficiency shall be deemed a violation of this Order as described in Section E.5 herein. Upon receipt of DEQ approval, the plan shall be implemented in accordance with the construction schedule contained in the approved plan. In the event the compensation plan consists, in whole or in part, of a contribution to an approved in-lieu fee fund or mitigation bank, the in-lieu fund contribution or mitigation bank credit purchase shall be made within **30 days** of permit issuance.
4. Written communications and reports required by this Order shall be submitted to the Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia 24019.



## **APPENDIX B**

North Oaks shall perform the SEP identified below in the manner specified in this Appendix.

1. The SEP to be performed by North Oaks is delivery of a check for \$5,250.00 to an appropriate City of Salem, Virginia official to be used for the purpose of purchasing hazmat equipment for the Salem Fire/EMS Department in Salem, Virginia.
2. Within thirty (30) days of the effective date of this Order, North Oaks shall send funds totaling not less than \$5,250.00 to the City of Salem, Virginia ("Salem") with the express provisions that: a) those funds shall be used only for purchase of hazmat equipment for the City of Salem Fire/EMS Department, as specified in a letter dated November 9, 2005 from James E. Taliaferro, II, Assistant City Manager of the City of Salem, to Mark Hendrickson of North Oaks; b) that the purchase and delivery of such equipment shall be completed not later than June 1, 2006; and c) that within 10 days of delivery of such equipment, Salem will submit to North Oaks an copy of the invoice from the equipment vendor, an itemized list of equipment delivered, and written verification of delivery. If sufficiently detailed, the invoice may serve as the itemized list for purposes of this requirement.
3. North Oaks shall submit to the Department written verification of the final overall and net cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment, or similar documentation within 30 days of submittal of the funds specified in Paragraph 2 above to the City of Salem.
4. North Oaks shall submit to the Department the invoice, itemized list, and written verification of delivery of the equipment specified in Paragraph 2 above within 30 days of delivery of such equipment to the City of Salem Fire/EMS Department.